

FILED
Court of Appeals
Division II
State of Washington
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NO. 52457-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL MATTHEWS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR Cowlitz COUNTY

The Honorable Anne M. Cruser, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court violated the requirements of RCW 9A.41.047(1)(a) by failing to orally notify appellant at the time of conviction or sentencing that he had lost the right to possess a firearm.

Issue pertaining to assignments of error

When a person is convicted of an offense making the person ineligible to possess a firearm, the convicting court shall notify the person, orally and in writing, that he or she must immediately surrender any concealed pistol license and may not possess a firearm unless his or her right to do so is restored by a court of record. The trial court failed to orally admonish appellant at any point of his loss of firearm rights and only notified him in writing through the judgment and sentence. Did the trial court violate the statutory requirements to notify a convicted person of the loss of the right to possess firearms?

B. STATEMENT OF THE CASE

On May 23, 2018, the Cowlitz County Prosecuting Attorney charged appellant Michael Matthews with failure to register as a sex offender, having two or more prior convictions for failure to register. RCW 9A.44.132(1)(b); CP 1-2. The case proceeded to jury trial before The Honorable Anne Cruser.

The State presented evidence that Matthews had previously been convicted of child molestation and had four prior convictions for failure to register. RP 54-61. He registered with the Cowlitz County Sheriff's Office on March 30, 2017, and then on August 29, 2017, he reported that he was transient. RP 66, 70. Matthews did not thereafter check in with the sheriff's office. RP 74.

Matthews acknowledged that he has prior convictions that require him to register as a sex offender and that he became transient after he registered with the Cowlitz County Sheriff's Office. RP 77-78. He testified, however, that he was in custody on community custody violations for most of the charging period and therefore unavailable to check in weekly. RP 79-80. He had tried to report a few times, but the registration officer was not there when he showed up, so there was no record of his compliance. RP 84.

The jury returned a guilty verdict and found by special verdict that Matthews was previously convicted on at least two occasions of failure to register. CP 38-39. The court imposed a standard range sentence of 34 months, with 36 months community custody. CP 45-46. Although the judgment and sentence contains a provision notifying Matthews he is ineligible to possess a firearm, the court did not orally advise him of the prohibition either at the verdict or at sentencing. CP 51; RP 124-40.

C. ARGUMENT

THE TRIAL COURT FAILED TO ORALLY ADMONISH MATTHEWS AS REQUIRED BY STATUTE THAT HE HAD LOST THE RIGHT TO POSSESS A FIREARM.

A person loses the right to possess a firearm if convicted in this state or elsewhere of any felony. RCW 9.41.040(2)(i). “Felony” means any felony offense under Washington law or any federal or out-of-state offense comparable to a felony offense under Washington law. RCW 9.41.010(6). Matthews was convicted in this case of felony failure to register as a sex offender, and thus his conviction results in loss of the right to possess a firearm. RCW 9A.44.132(1)(b); CP 40.

At the time of conviction of a felony, “the convicting ... court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm.” RCW 9.41.047(1)(a). Here, the trial court provided written notification to Matthews in the judgment and sentence that he had lost the right to possess a firearm. CP 51. But the court failed to notify him orally of the ineligibility to possess a firearm either at the time the jury returned the verdict or at sentencing. RP 124-40. This Court should remand to the trial court for a hearing in compliance with the statutory firearm

notifications. *See State v. Hayes*, 199 Wn. App. 1040 (2017) (unpublished opinion cited as persuasive authority pursuant to GR 14.1(a)).

D. CONCLUSION

The trial court's failure to comply with the notification requirements regarding Matthews's loss of firearm rights necessitates remand for a hearing that complies with the statutory notification requirements.

DATED February 27, 2019.

Respectfully submitted,



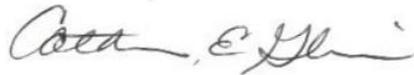
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Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in
State v. Michael Matthews, Cause No. 52457-1-II as follows:

Michael Matthews/DOC#322492
Washington State Penitentiary
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Walla Walla, WA 99362

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
February 27, 2019

GLINSKI LAW FIRM PLLC

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Transmittal Information

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